

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2003

Unum Life Insurance Company of America
2211 Congress Street
Portland, ME 04122

NAIC Group Code: 0416
NAIC Company Code: 62235
Colorado Company No.: 706

EXAMINATION PERFORMED
for the
STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

**Unum Life Insurance Company of America
2211 Congress Street
Portland, ME 04122**

**MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2003**

Examination Performed by

**Stephen E. King, CIE
Jo-Anne G. Fameree, AIE, FLMI, AIRC, ACS**

Independent Market Conduct Examiners

June 17, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Dean:

A market conduct examination of the Unum Life Insurance Company of America was conducted in accordance with and pursuant to §§10-1-203 and 10-3-1106, Colorado Revised Statutes. This examination focused on the Company's long-term care insurance business, involving a review of underwriting, rating, policyholder service, marketing, sales and claims practices. The Company records were examined at their offices, located at 300 South Borough Drive, South Portland, ME 04106.

The time period covered by the examination was from January 1, 2003 through December 31, 2003.

The results of the examination, herein, are respectfully submitted.

Stephen E. King, CIE

Jo-Anne G. Fameree, AIE, FLMI, AIRC, ACS

**MARKET CONDUCT
EXAMINATION REPORT
OF
UNUM LIFE INSURANCE COMPANY OF AMERICA**

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COMPANY PROFILE

Unum Life Insurance Company of America (the “Company”) is a subsidiary of UnumProvident Corporation ("UnumProvident"), a Delaware corporation. UnumProvident was formed on June 30, 1999, as a result of the merger between the Provident Companies and Unum Corporation.

The Company was incorporated in Maine, on August 24, 1966, as Community Life Insurance Company. Principal owners were Texas State Network, Keystone State and Keystone Health. Unum Holding Company (at the time called Union Mutual Corporation), acquired majority interest on May 20, 1969, with the remaining shares being acquired by Unum Holding Company in 1969, 1971, and 1972. The name of the Company was changed to Union Mutual Life Insurance Company of America on June 10, 1970, then to Union Mutual Stock Life Insurance Company of America, on May 28, 1971. On November 18, 1986, the name was again changed to Unum Life Insurance Company of America. On December 31, 1991, the Company became the survivor of the merger with Unum Life Insurance Company of America and Unum Pension and Insurance Company.

COMPANY OPERATIONS AND MANAGEMENT

Unum Life Insurance Company of America was licensed and began operations in Colorado, on December 26, 1969. The Company is licensed to and transacts business in 49 states and Canada. The Company does not transact business in New York.

The Company’s headquarters are located in Portland, Maine. UnumProvident has common management and processes for the Company. The five primary business areas are Market Development and Communications; Field Sales; Underwriting; Customer Loyalty Services; and the Benefits Center. Each of these functions has staff in one or more of the primary operations centers. The Company’s primary products include short-term disability, individual and group long-term disability insurance, as well as long-term care insurance and group life insurance

The Company reported \$3, 712,686 of long-term care earned premiums for calendar year 2003, which represented approximately 3.37% of the total long-term care marketshare for the State of Colorado.

PURPOSE AND SCOPE OF EXAMINATION

Independent Examiners, contracting with the Colorado Division of Insurance (DOI), in accordance with Colorado Insurance Law, §§ 10-1-201, 10-1-203 and 10-1-204.C.R.S., which allows the Commissioner the discretion and authority to schedule and conduct examinations for the purpose of auditing business practices of insurers, reviewed certain business practices of the Unum Life Insurance Company of America. The findings in this report, including all work products developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and generally accepted operating principles related to long-term care insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. Examiners have relied primarily on records and materials maintained by the Company. The market conduct examination covered the period from January 1, 2003, through December 31, 2003.

The examination included review of the following:

- Company Operations / Management
- Marketing and Sales
- Producers
- Underwriting - Forms / Policyholder Services
- Underwriting - Rating
- Underwriting - Applications
- Underwriting - Cancellations
- Claims

This examination report is a report written by exception. References to any practices, procedures or files, that contained no improprieties, were omitted. Therefore, the majority of the material reviewed may not be addressed in this report. In the course of the examination, Examiners provided the Company with Examination Memorandums and Comment Forms to obtain information ask questions and/or address noted discrepancies. When Examiners issue either form, the Company is required to provide a detailed response. Generally, only the Comment Form will cite a specific statute or regulation when a non-compliant situation is identified.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When utilizing a sampling technique to select a sample file population to review, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or as a result of the file selection process, it was not possible to determine an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample population was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

Examination findings may result in administrative action by the Division of Insurance. During the course of the examination, all unacceptable or non-complying practices of the Company may not have been discovered. Failure to identify specific Company practices, however, does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any life insurance company or product.

EXAMINERS' METHODOLOGY

In accordance with §10-1-203, Colorado Revised Statutes, examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and regulations, as they pertain to long-term care insurance companies, as shown in the following exhibit.

Exhibit 1

Law/Regulation	Concerning
Section 10-1-108	Duties of Commissioner – reports – publications – fees – disposition of funds - adoption of rules.
Section 10-1-109	Rules and regulations of commissioner
Section 10-1-111	Grounds and procedure for suspension or revocation of certificate or license of entities.
Section 10-1-127(6)(a)	Anti-fraud Plan
Sections 10-2-1001 to 10-2-1101	Managing General Agent Act
Section 10-2-103	Licenses - General Provisions - Definitions
Sections 10-2-401 to 10-2-417	Licenses – Licensing and Appointment of Insurance Producers
Sections 10-2-701 to 10-2-704	Licenses – Business Conduct of Licensees
Section 10-3-105	Certificate of Authority
Section 10-3-109	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain.
Sections 10-3-1101 to 10-3-1104	Unfair Competition – Deceptive Practices
Sections 10-19-101 to 10-19-115	Long –term Care Insurance Act
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Regulation 1-2-9	Fees Charged by Agents/Brokers
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority
Regulation 4-4-1	Concerning Requirements for Long-term Care Insurance
Regulation 4-4-2	Implementation of Basic and Standard Long-term Care Insurance Plans
Regulation 4-4-3	Suitability Standards for Long-term Care Insurance Products

Company Operations / Management

Examiners verified the Certificate of Authority and reviewed Company management and administrative controls and record retention practices. Additionally, the Company's cooperation during the course of the examination was noted.

Marketing and Sales

Examiners reviewed all sixty-two (62) marketing and sales pieces used in the State of Colorado during the examination period. The marketing and sales materials were reviewed to verify compliance with Colorado regulations and to determine if the Company accurately represented their products.

Producers

Examiners reviewed commission records to ensure that all producers receiving commissions, or a percentage of premiums, were properly licensed.

Underwriting – Forms / Policyholder Services

Examiners reviewed all forms used during the examination period, as provided by the Company, to determine compliance with Colorado insurance laws.

New Business Underwriting Practices and Rating

Examiners randomly selected a sample population of fifty (50) individual files from a population of 182 files. Additionally, Examiners chose a proportionate selection of fifty (50) certificateholder enrollment files from each of the eight (8) policyholder groups. The total certificateholder population under those groups was 562.

Underwriting – Cancellations / Declinations

Examiners reviewed all forty-five (45) cancelled files to ensure timely notification and, when applicable, that premium refunds were timely and accurate. In addition, Examiners reviewed all twenty-four (24) declined files to ensure that both fair and consistent underwriting practices were used and, when applicable, that premium refunds were timely and accurate.

Claims

Examiners reviewed all seven (7) paid claim files and all three (3) claims that were denied/closed without payment during the examination period. Examiners reviewed the Company's claims handling guidelines and claim information, to determine timeliness of processing and accuracy of payment.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of seven (7) findings in which the Company did not appear to be in compliance with Colorado insurance law. The following summarizes Examiner findings.

Company Operations / Management: Examiners found three (3) areas of concern in their review of Company Operations / Management. Examiners identified the following issues:

- Certifying compliance of non-compliant policy forms, in some cases.
- Failure to file a complete annual report of all policy forms.
- Discriminating between individuals of the same class, in the determination of the initial policy term.

Marketing and Sales: In the area of Marketing and Sales, no compliance issues or concerns were identified and thus are not addressed in this report.

Producers: In the area of Producers, no compliance issues or concerns were identified and thus are not addressed in this report.

Underwriting – Forms / Policyholder Services: Examiners found two (2) areas of concern in their review of forms. Examiners identified the following issues:

- Including in some policy forms, incontestability language that is incomplete and inconsistent with Colorado insurance law.
- Including in some policy forms, exclusionary provisions that are not allowed under Colorado insurance law.

New Business Underwriting Practices and Rating: Examiners found two (2) areas of concern in their review of the Company's New Business Underwriting Practices and Rating. Examiners identified the following issue:

- Failure, in some cases, to determine the applicant's financial suitability for coverage.
- Failure, in some cases, to substantiate that required information regarding the Basic and Standard plans was provided to applicants.

Underwriting – Cancellations: In the area of Cancellation refunds, no compliance issues or concerns were identified and thus are not addressed in this report.

Claims: In the area of Claims, no compliance issues or concerns were identified and thus are not addressed in this report.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

UNUM LIFE INSURANCE COMPANY OF AMERICA

COMPANY OPERATIONS AND MANAGEMENT
FINDINGS

Issue A1: Certifying compliance of non-compliant policy forms, in some cases.
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Section 10-3-1104 C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
 - (s) Certifying pursuant to section 10-16-107.2 or issuing, soliciting, or using a policy form, endorsement, or rider that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in Sections 10-2-704, 10-2-801, 10-2-804, 10-3-1107, 10-3-1108, and 10-3-1109.

It appears that the Company is not in compliance with Colorado insurance law in that it certified forms on the 2003 annual certificate of compliance, which in some cases, did not comply with Colorado law, as evidenced by Issues E1 and E2.

Recommendation No.1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-3-1104 C.R.S. In the event the Company is unable to show such proof; it should provide evidence to the Division of Insurance that it has taken appropriate steps to ensure all forms included on the certificate of compliance comply with Colorado insurance law.

Issue A2: Failure to file a complete annual report of all policy forms.
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Section 10-16-107.2 Filing of health policies, states in part:

- (1) All sickness and accident insurers, health maintenance organizations, and nonprofit hospital and health service corporations authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy form, endorsement, or rider for any sickness, accident, nonprofit hospital and health service corporation, health maintenance organization, or other health insurance policy, contract, certificate, or other evidence of coverage issued or delivered to any policyholder, certificate holder, enrollee, subscriber, or member in Colorado. Such listing shall be submitted by January 15, 1993, and not later than December 31 of each subsequent year and shall contain a certification by an officer of the organization that each policy form, endorsement, or rider in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

Regulation 1-1-6, Concerning The Elements of Certification for Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act", which is promulgated pursuant to §§ 10-1-109, 10-4-419, 10-4-633, 10-15-105 and 10-16-107.2 and 10-16-119, C.R.S., states in part:

Section 3. Applicability and Scope

This regulation applies to all insurers and other entities authorized to conduct business in Colorado which provide health coverages...

Section 5. Rules

C. Not later than December 31 of each year, each entity providing health care coverages shall file an Annual Report of policy forms including a fully executed certificate of compliance...

Colorado Regulation 4-4-1 Concerning Requirements for Long-term care insurance, promulgated under the authority of §10-1-109(1), 10-3-110(1) and 10-19-113.7, C.R.S., requires in part:

XIII. FILING REQUIREMENT

...In all other instances, insurers, non-profits and health maintenance organizations are required to comply with the appropriate Colorado Insurance Laws and Regulations concerning the filing of forms and rates.

During the review of new business files, it was noted that the Company used application forms 5402-98(2/01)...CO, 5402-98 (2/01)...CO (10/01), 5402-98(1/99)...CO (5/99), and 5402-98(2/01)...(8/01), during the examination period. However, none of the referenced forms were included on the Company's 2003 annual report of policy forms that was submitted to the Division.

Based on the aforementioned, it appears that the Company's 2003 annual report of policy forms was incomplete, and therefore not in compliance with the requirements of Colorado insurance law.

Recommendation No. 2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-16-107.2 C.R.S., Colorado Regulations 1-1-6 and 4-4-1. In the event the Company is unable to show such proof; it should provide evidence to the Division of Insurance that it has taken appropriate steps to ensure future compliance with Colorado insurance law.

Issue A3: Discriminating between individuals of the same class, in the determination of the initial policy term.

Section 10-3-1104 C.R.S. Unfair methods of competition and unfair or deceptive acts or practices.

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.
 - (f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

It is the Company's policy to differentiate between applicants that send premium payments with their application and those who do not. For applications that are received with money, coverage is effective the date the application is signed; however, the policy effective date is seven (7) days after the date the coverage is actually approved by the Company. For applications that are received without money, the coverage effective date and policy effective dates are the same, which is seven (7) days after the date that coverage is actually approved by the Company. As a result, applicants who submit the premium payment with their application, receive additional coverage at no cost, from the time their application is signed until the underwriting process is complete and coverage is approved. Since the coverage period at no cost, is contingent upon the length of time it takes the Company to complete the underwriting process, applicants that are provided the no cost coverage do not necessarily receive the same amount of "free" coverage.

Recommendation No.3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-3-1104 C.S.R. In the event the Company is unable to show such proof; it should provide evidence to the Division of Insurance that it has corrected its procedures with regard to determining the effective date of coverage to ensure that the initial policy term is determined consistently among all applicants as required by Colorado insurance law.

UNDERWRITING – FORMS / POLICYHOLDER SERVICES
FINDINGS

Issue E1: Including in some policy forms, incontestability language that is incomplete and inconsistent with Colorado insurance law.

Section 10-19-113.3 C.R.S., Incontestability Period states:

- (1) With respect to a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny a long-term care insurance claim under such a policy upon a showing of misrepresentation that is material to the acceptance for coverage.
- (2) With respect to a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and pertains to the condition for which benefits are sought. A policy or certificate that has been in force for two years shall not be contested solely on the grounds of misrepresentation. Such a policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.
- (3) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection (3), "field issued" means a policy or certificate issued by a producer pursuant to the underwriting authority granted to the producer by a carrier.
- (4) No benefit payment may be recovered by the insurer in the event that the policy or certificate is rescinded pursuant to this section.

Company form BLTC contains the following language regarding incontestability.

"STATEMENTS

UNUM considers any statements you make for insurance in any application(s) for initial coverage and/or any subsequent changes in coverage to be complete and true to the best of your knowledge and belief. All statements made in any application are considered representations and not warranties (absolute guarantees). If any of these statements are not complete and/or not true at the time they are made, UNUM can:

- reduce or deny any claim, or
- terminate insurance from the original effective date

UNUM must use only the statements made in the signed application (s) as a basis for doing this.

Except for fraud, UNUM can take these actions only in the first 2 years your initial coverage or change in coverage is in force. There is no time limit for UNUM to take these actions if any statement is fraudulent.

The above provision appears to be inconsistent with the requirements of §10-19-113.3 C.R.S., in that the Company indicates that if *any* [emphasis added] statements are not complete and/or not true, the Company may reduce or deny any claim or terminate coverage back to the effective date. Also, the Company states that "There is no time limit ...to take action if *any* [emphasis added] statement is fraudulent. However, §10-19-113.3 C.R.S., outlines the following criteria that must be met before a company can contest coverage because of misrepresentation on an application.

1. for policies in force less than six months, the misrepresentation had to be material to the acceptance for coverage;
2. for policies in force for six (6) to twenty-three (23) months, the misrepresentation had to be both material to the acceptance of coverage and pertinent to the condition for which benefits were sought; and
3. for policies in force for two years or more it must be shown that the insured knowingly and intentionally misrepresented relevant facts relating to his/her health.

Company forms LTC94, NH5091, NH5191, NH5291, NH5391, NH5491, NH5591, NH5092, NH5192, NH5292, NH5392, NH5492, and NH5592, each contain the following language regarding incontestability.

"Incontestable

After two years from the policy's Effective Date, only fraudulent misstatements in your application may be used to contest this policy. If this policy is reinstated, the contestable period will be two years from the reinstatement date.

"Contest" means that we question the validity of coverage under this policy by letter to you. This contest is effective on the date we mail the letter and refund the premium to you.

There is no time limit to contest this policy for fraudulent misstatements."

The above provision appears to be inconsistent with the requirements of §10-19-113.3 C.R.S., in that the Company indicates that fraudulent statements are used to contest the policy and that there is no time limit to contest the policy for fraudulent misstatements. However, §10-19-113.3 C.R.S., states that for policies in force for two years or more the fraudulent statements must be relevant facts relating health.

Recommendation No. 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-19-113.3 C.R.S. In the event the Company is unable to show such proof; the Company should provide evidence to the Division of Insurance that it has revised the form language, and any advertisements affected by the language changes. Additionally, the Company should document the steps taken to ensure any forms used in the future are in compliance with Colorado insurance law.

Issue E2: Including in some policy forms, exclusionary provisions that are not allowed under Colorado insurance law.

Colorado Amended Regulation 4-4-1, Concerning Requirements for Long Term Care Insurance, promulgated under the authority of §10-1-109(1), 10-3-110(1) and 10-19-113.7 C.R.S., states in part:

VI. Policy Practices and Provisions

- B. Limitations and Exclusions.** No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:
1. Preexisting conditions or diseases.
 2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease, senile dementia, other organic brain syndromes, or other types of senility diseases;
 3. Treatment provided in a government facility (unless otherwise required by law) when there are no charges for services, services for which benefits are available under Medicare or other governmental program (except Medicaid or except as otherwise required by law), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is made normally in the absence of insurance.
 4. This Subsection B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

Company forms LTC99Q and TQGLTC95, each contain the following exclusions, which are not included in the list of exclusions permitted under Colorado Regulation 4-4-1:

1. a Disability caused by alcoholism or alcohol abuse;
2. a Disability caused by voluntary use of any controlled substance unless the controlled substance is prescribed for you by a doctor ("controlled substance" is defined in Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and all amendments);

The Company's forms listed below each contain the following exclusion.

A loss which is caused by or results from substance abuse including, but not limited to, prescription or non prescription drugs, except when taken as ordered by a physician;

Company forms: LTC94; NH5592; NH5492; NH5392; NH5292; NH5192; NH5092; NH5591; NH5491; NH5391; NH5291; NH5191; and NH5091

The Company's forms listed below each contain the following exclusions.

a Disability caused by alcoholism or alcohol abuse;

a Disability caused by voluntary use of any controlled substance unless the controlled substance is prescribed for you by a doctor ("controlled substance" is defined in Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and all amendments);

Company forms: GLTC95; TQGLTC95B; TQGLTC95S; LTC94Q; LTC99; LTC99QB; LTC99QS; and BLTC

It appears that the inclusion of the above referenced exclusions in the Company's policy forms, is not in compliance with the requirements of Colorado Regulation 4-4-1.

Recommendation No 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-4-1. In the event the Company is unable to show such proof; the Company should provide evidence to the Division of Insurance that it has revised the form language and has taken steps to ensure future compliance with Colorado insurance law. Additionally, an evaluation should be made of claims denied under these provisions and adjustments should be made accordingly.

NEW BUSINESS UNDERWRITING PRACTICES AND RATING
FINDINGS

Issue G1: Failure, in some cases, to determine the applicant's financial suitability for coverage.

Colorado Regulation 4-4-3 Suitability Standards for Long-term Care Insurance Products as promulgated pursuant to Sections 10-1-109 and 10-19-113.7, C.R.S., requires in part:

III. Rules

B. 3. Effective January 1, 1997, a completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

F. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. If rejected, the issuer shall send the applicant a letter substantially similar to Appendix C. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

Individual New Business Files

Population	Sample Size	Number of Exceptions	Percentage to Sample
182	50	7	14%

A sample of fifty (50) individual new business files from a population of 182 contained seven (7) exceptions (14%) in which the Company failed to determine the applicant's financial suitability for coverage.

In four (4) of the instances, the applicant elected not to provide the financial information requested on Long Term Care Personal Worksheet. The applicant's file did not contain documentation verifying that the Company made an attempt "to verify the applicant's intent", as required by the above referenced Regulation.

In three (3) instances, the Long Term Care Personal Worksheet was blank, with the exception of the applicant's signature. The applicant's file did not contain any documentation verifying that the Company made an attempt "to verify the applicant's intent", as required by the above referenced Regulation.

Based on the above information, it appears that the Company has, in some cases, failed to take the necessary steps to determine the applicant's financial suitability for coverage.

Recommendation No 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-4-3. In the event the Company is unable to show such proof; the Company should provide evidence to the Division of Insurance that it has taken steps to ensure future compliance with the requirement to determine the applicant's financial suitability for coverage, in compliance with Colorado insurance law.

Issue G2: Failure, in some cases, to substantiate that information regarding the Basic and Standard Plans was provided to applicants.
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Colorado Regulation 4-4-2 Implementation of Basic and Standard Long Term Care Insurance Plans, as promulgated pursuant to Sections 10-19-113.7 and 10-1-109, Colorado Revised Statutes (C.R.S.), states in part:

Section 4. Rules

- C. Carriers and producers selling long-term care insurance shall present the Basic and Standard Long-term Care Plans to each person solicited for long-term care insurance. With respect to group long-term care insurance, if the group policyholder rejects the offer of the Basic and Standard Long-term Care Insurance Plans, then mailings to members of the group need not include information on the Basic and Standard Long-term Care Plans. With respect to all other types of long-term care insurance, for direct mail business the Basic and Standard Long-term Care Plans must be included in all offerings.

Carriers and producers shall make reasonable efforts to obtain the signature of each applicant for long-term care insurance on a statement certifying that the applicant has been provided information about the Basic Long-term Care Plan and Standard Long-term Care Plan and an explanation of these plans' benefits and costs. If application for the Basic Long-term Care Plan or Standard Long-term Care Plan is made directly with the carrier by mail or other method, the carrier's obligation under this subsection shall be satisfied if the carrier includes in the application materials a statement to be signed and returned to the carrier pursuant to this subsection.

Individual New Business Files

Population	Sample Size	Number of Exceptions	Percentage to Sample
182	50	5	10%

A sample of fifty (50) individual new business files, from a population of 182, contained five (5) exceptions (10%) in which the Company failed to substantiate that information regarding the Basic and Standard Plans was provided to applicants.

Declined Files

Population	Sample Size	Number of Exceptions	Percentage to Sample
24	24	3	13%

The entire declined business population of twenty-four (24) was reviewed. The population contained three exceptions (13%) in which the Company failed to substantiate that information regarding the Basic and Standard Plans was provided to applicants.

The application forms used in three (3) declined files and five (5) new business files did not contain language allowing the applicant to certify that he/she had been provided with information regarding the

Basic and Standard Long-term Care Plans, including costs and benefits provided. Additionally, there was no documentation in the files to substantiate that the information had been provided to the applicants.

Based on this information, it appears that the Company has not met the requirements of Colorado Regulation 4-4-2 as outlined above.

Recommendation No 7:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-4-2. In the event the Company is unable to show such proof, the Company should provide evidence to the Division of Insurance that it has taken steps to ensure that the appropriate information regarding the Basic and Standard Long-term Care Plans is provided to applicants and documentation of providing such information is maintained as required by Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS

ISSUES	Rec. No.	Page No.
COMPANY OPERATIONS AND MANAGEMENT		
Certifying compliance of non-compliant policy forms, in some cases.	1	13
Failure to file a complete annual report of all policy forms.	2	15
Discriminating between individuals of the same class, in the determination of the initial policy term.	3	16
UNDERWRITING – FORMS / POLICYHOLDER SERVICES		
Including in some policy forms, incontestability language that is incomplete and inconsistent with Colorado insurance law.	4	19
Including in some policy forms, exclusionary provisions that are not allowed under Colorado insurance law.	5	21
NEW BUSINESS UNDERWRITING PRACTICES AND RATING		
Failure, in some cases, to determine the applicant's financial suitability for coverage.	6	24
Failure, in some cases, to substantiate that information regarding the Basic and Standard Plans was provided to applicants.	7	26

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